

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH,
IN AND FOR UTAH COUNTY.

PROVO RESERVOIR COMPANY, a corporation,

Plaintiff,

Civil No. 2888

-vs-

PETITION

PROVO CITY, et-al, and SMITH
DITCH COMPANY, a voluntary association. - - - - ,

Defendants. :
- - - - -

The petition of A. L. Tanner respectfully shows to
the Court:

1. That T. F. Wentz is the duly appointed, qualified
and acting commissioner of Provo River under appointment of
the Court in the above entitled cause, and that said T. F. Wentz
now is, and at all times herein mentioned, has been such commissioner and actively in charge of the distribution of water
and water rights specifically mentioned and set out in this petition.

2. That Don York is the water master and secretary
of a voluntary association of water users known as Smith Ditch
Company, and at any and all times herein mentioned was, and now
is, in charge of the duty of making distribution of any and all
of the waters to the said members of said voluntary association
of water users known as the Smith Ditch Company.

3. That your petitioner, A. L. Tanner, is one of the
said voluntary association known as the Smith Ditch Company
and is the owner of substantially 2-1/5 shares of said Smith
Ditch.

4. That the said Smith Ditch diverts water from Provo
River as a part of the diversion made by the West Union Canal
Company, and said Smith Ditch and West Union Canal take their
water from Provo River in Utah County, Utah, and that the distribution of water through the said West Union Canal and said Smith
Ditch is immediately in charge of T. F. Wentz, as water commissioner
of Provo River, under an appointment in the above entitled Court

in the above entitled cause, and further the said T. F. Wentz, as such river commissioner, is charged with the distribution of water belonging to the said Smith Ditch Company through and from the said West Union Canal.

5. That in a certain civil action filed in the above entitled Court, to-wit, Civil action No. 5118, entitled West Union Canal Company, a corporation, plaintiff vs. Pauline Schemensky, et-al., a voluntary association, not incorporated, under the name and style of Smith Ditch Company, defendants, the said T. F. Wentz as commissioner of Provo River became charged with the duty of making distribution of the waters awarded in the said cause to the litigants therein, and to this petitioner as one of such litigants.

6. That the waters and water rights of the said Smith Ditch Company and said West Union Canal Company were litigated in the above entitled cause, to-wit, Civil action No. 2838.

7. That the provision of the said decree rendered in said Civil action No. 5118 by the above entitled Court, is as follows, to-wit:

"The water commissioner of Provo River shall take general supervision of the distribution of the waters covered by this decree to the persons entitled thereto."

8. That by the terms of the judgment rendered in the above entitled cause, to-wit, Civil action 2838, the above entitled Court reserves jurisdiction to make any and all necessary orders and directions to the commissioner respecting the distribution of waters awarded in said cause.

9. That in the said Civil action 5118 hereinabove referred to, it was adjudged and decreed as follows:

"The parties to this action shall have the right to use said canal system for carrying water not ~~in~~ covered ~~fluenced~~ by this decree, subject to the payment of a just proportion of the cost of maintenance as provided by law and subject to the prior right to use said canal system for carrying the water covered by this decree."

The said canal system so referred to was the canal known as the West Union Canal in combination with the Smith Ditch and

the waters referred to as covered by this decree were the water rights of the defendants and of the said West Union Canal Company specifically set out in the judgment rendered in said cause.

10. That by the said decree in the said cause Civil action 5118, it was determined by the Court that said defendants associated as Smith Ditch Company and receiving their water from said West Union Canal at a point known as Carter Point, were entitled to the use of 4.26 second feet of water from May 10 to June 20; 3.88 second feet from June 20 to July 20; 3.39 second feet from July 20 to September 1; and 3.05 second feet from September 1 to May 10 of each year, and that said West Union Canal Company and members of the Smith Ditch Company^{106.} receive their water below Carter Point, or Lateral No. 1, were entitled to waters from the said West Union Canal in quantities as follows, to-wit: From May 10 to June 20, 27.67 second feet; from June 20 to July 20, 25.01 second feet; from July 20 to September 1, 22.61 second feet; and from September 1 to May 10, 22.95 second feet.

11. That the maximum flow of waters in said West Union Canal, as determined by the Court in said cause, was 31.93 second feet between the dates of May 10 and June 20; that said West Union Canal and Smith Ditch have a capacity^{in excess} of 50 second feet.

12. That under the said judgment of the above entitled Court in said cause 5118, wherein this petitioner is a party, it was determined by the above entitled Court by reason of the provision of the said judgment hereinabove specifically set forth, that the parties to said cause might use ~~any excess capacity in~~ said canal for transferring through the same any waters not specifically covered by the said judgment.

13. That this petitioner on or about the 20th day of April, became the assignee of Caleb Tanner and Esthma Tanner of a certain flow right and right to the use of the waters of

Provo River for the season of 1936 in quantities as follows: May 10 to June 20, .29 c.f.s.; June 20 to July 20, .26 c.f.s.; July 20 to September 1, .23 c.f.s.; September 1 to May 10, .21 c.f.s.; that on or about said 20th day of April, 1936, notice of said assignment was served upon T. F. Wentz as commissioner of Provo River by your petitioner, A. L. Tanner, and request made for the delivery to your petitioner of said water rights so assigned to your petitioner by the said Caleb Tanner and Esthma Tanner, and the said T. F. Wentz was requested to make diversion of said water rights so assigned to your petitioner from a point on said West Union ^{Canal} ~~and Smith Ditch~~, known as Carter point; said waters are equivalent to 3 shares of the stock of the Smith Ditch Company, ^{located at} ~~above lateral No. 1, or~~ Carter's Point, on the said ditch, and as a practical matter water rights in said canal system are so distributed.

14. That on or about the said 20th day of April, 1936, your petitioner further made demand upon said Smith Ditch Company, Joshua Davis, its president, and Don York, its secretary, and upon T. F. Wentz as commissioner of Provo River, and upon the West Union Canal Company, in writing, for the delivery to him through the said West Union Canal of said water rights so assigned to him by the said Caleb Tanner and Esthma Tanner for the season of 1936, and that the said T. F. Wentz as commissioner of Provo River wilfully, wrongfully and arbitrarily refused, and still continues to refuse, to make distribution of the said assigned waters to this petitioner, and that the said Smith Ditch Company, through its officers and agents, has stated that they will not regulate the same in said distribution system under their control and will not recognize the rights of this petitioner to carry the said waters through the said canal.

15. That at all times herein mentioned there has been, and now is, waters in Provo River and in said canal sufficient to supply the maximum rights and demands of any and all persons whomsoever entitled to carry water through said canal, and there

has been, and now is, an excess capacity of such rights, and waters flowing in said canal which have been, and are being, wasted through the same and not applied to any beneficial uses; that at all times herein mentioned there has been, and now is, waters in Provo River owned by the said Caleb and Esthma Tanner sufficient to supply the rights assigned to this petitioner as herein stated.

16. Petitioner further alleges that there has been no demand upon said T. F. Wentz as commissioner of Provo River by any other parties whatsoever to carry waters through the said canal in excess of the rights defined in said cause No. 5118 Civil hereinabove referred to, except the request and demand of this petitioner.

16. That this petitioner requires the delivery of the said waters assigned to him by the said Caleb and Esthma Tanner for beneficial uses and for the purpose of irrigation of crops; that according to established customs and the necessity of conserving water, it is advisable that the said rights so assigned to this petitioner be distributed in rotation, combined with the other waters of the said Smith Ditch Company, and that such rotation may cause the necessary slight change in the time allotment of the flow rights of said Smith Ditch Company to its owners and users, but that said change is entirely practicable and your petitioner hereby agrees to pay all the reasonable expenses and charges connected therewith.

17. That it is entirely practicable to deliver the said water rights so assigned to this petitioner by the said Caleb Tanner and Esthma Tanner from the said point of diversion, to-wit, Carter Point, to the uses of this petitioner as a ~~diversion~~ ^{Conveyance} flow; that petitioner verily believes that such use would not be the most economical use of said water.

WHEREFORE YOUR PETITIONER PRAYS: That a citation be issued by the above entitled Court, directed to the said T. F. Wentz as commissioner of Provo River, and to the said Don York

as secretary and water master of the said Smith Ditch Company, directing the said T. F. Wentz, as such river commissioner of Provo River, to divert into the said West Union Canal water rights assigned to your petitioner as hereinabove set out and to distribute the same to this petitioner, ^{at} ~~in Lateral No. 1, or~~ Carter's Point, on the said West Union Canal as a flow right, or in the alternative that the said T. F. Wentz or said Don York as secretary and water master of said Smith Ditch Company be required to schedule said waters to this petitioner on turns and in rotation with the said flow rights of the said Smith Ditch Company, or that, in the alternative, the said T. F. Wentz and said Don York, be required to appear before the above entitled Court on a day certain, then and there to show cause why they have not complied with such order of the Court.

Petitioner further prays for general relief.

A. L. Tanner
PETITIONER

STATE OF UTAH)
) SS.
COUNTY OF UTAH)

A. L. Tanner, being first duly sworn, deposes and says: That he is the petitioner in the above entitled action; that he has read the above and foregoing Petition and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated upon information and belief and as to such matters he believes it to be true.

A. L. Tanner

Subscribed and sworn to before me this 2nd day of June, 1936.

A. L. Tanner

NOTARY PUBLIC
Residing at Provo, Utah.

My Commission Expires
April 10, 1937.

as secretary and water master of the said Smith Ditch Company, directing the said T. F. Wentz, as such river commissioner of Provo River, to divert into the said West Union Canal water rights assigned to your petitioner as hereinabove set out and to distribute the same to this petitioner, ^{at} ~~in Lateral No. 1, or~~ Carter's Point, on the said West Union Canal as a flow right, or in the alternative that the said T. F. Wentz or said Don York as secretary and water master of said Smith Ditch Company be required to schedule said waters to this petitioner on turns and in rotation with the said flow rights of the said Smith Ditch Company, or that, in the alternative, the said T. F. Wentz and said Don York, be required to appear before the above entitled Court on a day certain, then and there to show cause why they have not complied with such order of the Court.

Petitioner further prays for general relief.


A. L. Tanner
PETITIONER

STATE OF UTAH }
COUNTY OF UTAH } SS.

A. L. Tanner, being first duly sworn, deposes and says: That he is the petitioner in the above entitled action; that he has read the above and foregoing Petition and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated upon information and belief and as to such matters he believes it to be true.

Subscribed and sworn to before me this 2nd day of June, 1937.

A. L. Tanner
A. J. Samson
NOTARY PUBLIC
Residing at Provo, Utah.



My Commission Expires
April 10, 1937.

7888
IN DIST. COURT
UTAH CO., UTAH
FILED

Oct 2 - 1936
Charles D. Hansen Clerk
Orville D. Hansen Deputy